

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALBERT DANTZLER,	)	
	)	
Plaintiff	)	
	)	2:05cv1727
vs.	)	Electronic Filing
Secretary JEFFREY BEARD, Executive	)	
Secretary JOHN SHAFFER, WILLIAM	)	Judge David S. Cercone/
STICKMAN, Regional Deputy Super-	)	Magistrate Judge Amy Reynolds Hay
intendent, JOHN DOE, Classification	)	
Officer, LANCE COUTERIER, Chief	)	
Psychologist, FRED MAUE, Chief	)	
Psychiatrist, JOSEPH FOLINO, Super-	)	
intendent of SCI-Greene, KEN	)	
MILLER, Unit Manager, HARRY WILSON,	)	
Superintendent of SCI-Fayette,	)	
	)	
Defendants	)	

**MEMORANDUM ORDER**



AND NOW, this 12 day of December, 2006, after de novo review of the record and upon due consideration of the magistrate judge's report and recommendation filed on November 14, 2006, and defendant's objections thereto filed on November 24, 2006, IT IS ORDERED that Defendants' motion to dismiss be, and the same hereby is, granted in part and denied in part. It is granted with respect to Plaintiff's claims under the First, Fourth, Fifth and Sixth Amendments and as to all of Plaintiff's state law claims. It is denied as to his Eighth Amendment claims and his Fourteenth Amendment procedural due process claim and equal protection claim.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if the parties desire to appeal from this Order they must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed.R.App.P.

Plaintiff's objections are without merit. First, plaintiff's status as being in administrative custody as compared to disciplinary custody has no bearing on the impact of Beard v. Banks, -

U.S. – , 126 S. Ct. 2572 (2006), on his First Amendment claim. To the extent that plaintiff rests his claims on the contention that he was denied certain property or privileges, such as access to photographs, non-religious newspapers, calendars, radio, etc., in the LTSU, the Defendants have a legitimate penological interest in not permitting him to have such privileges/ property. Id. (finding in a class action that the policy objective of limiting privileges in the LTSU in order to motivate better behavior on the part of particularly difficult prisoners satisfies the Turner standard). Finally, contrary to plaintiff's unfounded assertions, he was a class member who now is bound by the holding in Banks. Accordingly, any First Amendment claim founded on the idea that plaintiff was being improperly deprived of such material or privileges fails as a matter of law.



David Stewart Cercone  
United States District Judge

cc: Honorable Amy Reynolds Hay  
United States Magistrate Judge

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